

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1249

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

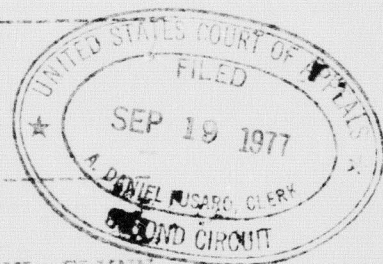
-against-

BARTHOLEMREW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO,

Defendant-Appellants

On Appeal from the United States District Court
For the Southern District of New York

BRIEF AND APPENDIX FOR
APPELLANT JOHN SAMMARCO



W. PAUL FLYNN
Attorney for Appellant
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132 Temple Street
New Haven, Connecticut 06510
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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT
DOCKET #

UNITED STATES OF AMERICA

VS.

JOHN SAMMARCO

THIS BRIEF REPRESENTS THE ANDERS STATEMENT
PRELIMINARY STATEMENT

John Sammarco appeals from a judgment of conviction by a jury on December 6, 1976 in the United States District Court for the Southern District of New York. The presiding jurist was the Honorable Milton J. Pollack, United States District Judge.

The Indictment was returned on August 3, 1976 charging Bartholemew Buiges, Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco with a conspiracy to defraud the United States Government and violating Title 18 U.S.C. §287; and with two substantive charges of filing false, fraudulent, and fictitious claims with the Department of Agriculture in violation of Title 18 U.S.C. §§287 and 2.

The trial began on November 29, 1976 and ended on December 6. All the defendants were found guilty.

The Defendant, Sammarco, was sentenced to two months imprisonment on each of three Counts, the sentence to run concurrently.

STATEMENT OF THE CASE:

A. Prosecution's case

A non-profit New York Corporation known as Youth-In-Government (YIG) sponsored a summer lunch program for New York City children in the months of July and August, 1975.

The Defendant, Buiges, was the Chairman of the Board of YIG; the Defendant, Angelo Puig, was the Executive Director; Irma Anes was the bookkeeper and Administrative Assistant. Susan Horowitz and John Sammarco were "monitors" performing an operational function for the program.

YIG established an office at 2176 Amsterdam Avenue in a store front that was cleaned up and painted in June, 1975. Food was purchased, on bid, from the A.M. P.M. Food Services and was delivered directly to the sites. YIG had obtained agreements to supply various sites.

The employees were all designated as monitors after the Department of Agriculture cut back the scope of the program submitted by YIG. The Department of Agriculture financed the program at a bid price for the food plus an administrative charge not to exceed six cents per lunch.

On August 22 and August 29, 1975, YIG submitted vouchers for the lunches delivered in July and August, 1975. The payroll book, maintained by Irma Anes, reflected that each employee worked 7 hours a day at \$110.00 per week for 8 weeks.

Several witnesses testified that they worked for the YIG summer luncheon program in 1975. Each witness testified that they acted as a monitor, they went to various distribution locations daily, they returned complaints to the office. None testified to working seven hours a day. All of these witnesses indicated that they were introduced to Sammarco and Horowitz as supervisors at a meeting in the YIG store front on June 27 but they saw them seldom thereafter.

An agent of the F.B.I. testified (503-520) that he interviewed the Defendant, Sammarco, at the New Rochelle office of the F.B.I. A formal warning was given to Mr. Sammarco. He, thereafter, proceeded to discuss his having met

the Defendant, Buiges, through a mutual friend, Frank Cedo. Buiges approached Sammarco for a loan of one thousand dollars. He told Sammarco that the money would be returned to him through the program, and that he would make a profit on his money. Sammarco explained it would be returned to him through his salary.

Sammarco told Melonas that shortly after arranging for the money, he received a call to report to YIG as an assistant coordinator. His function was to receive a list of violations daily and to proceed to investigate them. His hours were from 10:00 A.M. to 2:30 P.M. The type of monitoring done by Sammarco was for unsanitary conditions at the site where food was being consumed; and, off-premises consumption.

Evidence was adduced to the effect that during the months of July and August, Defendants, Puig, Anes and Horowitz had other full time jobs while being paid by YIG.

There was no evidence that the food was not delivered to the needy children.

The Defendant, Sammarco, did not testify.

DEFENDANT'S CASE:

The Defendant's case was predicated upon the testimony of the prosecution witnesses that the Defendant had in fact worked to set up the YIG office for a number of days in the month of June, 1975; and that by reason of a cut back in the number of lunches that YIG was to deliver, there had to be a reordering of the administration of the program where everyone was in fact a monitor. A number of witnesses saw Sammarco at the site. The nature of the duties of these witnesses was such that they would not have the occasion to see Sammarco at the offices since his work was basically to check out complaints and get them corrected. Puig and Buiges both testified that no arrangement for no work was ever made. Puig stated that Sammarco came to work regularly. No records were prepared by Sammarco for submission to the Department of Agriculture. Anes testified that she spoke with Sammarco by phone. A series of witnesses testified to calling Sammarco during the business day in July and August, 1975 and either speaking with him or receiving a return call because he was out when the call was made.

ARGUMENT:

DOES THERE EXIST A BONA FIDE BASIS FOR APPEAL ON COUNT 1?

The basic question in a criminal case is - was there substantial evidence to support the verdict. If so, that evidence must be viewed in the light most favorable to the prosecution. Cf. GLASSER V. UNITED STATES, 315 U.S. 60, at 80

Counsel respectfully submits that the Court did appropriately define the crime of conspiracy in the charge. The testimony that acted as the linch pin for the jury to conclude that Sammarco joined such a conspiracy was provided by the witness, Melonas, when he recited Sammarco's introduction to YIG. Based upon the evidence and the law recited in the GLASSER case, it was sufficient to permit the jury to conclude that Mr. Sammarco did conspire.

In the light of this evidence a bona fide basis to appeal the conviction on Count I does not exist.

There does not exist a basis for a bona fide argument on the substantive counts either.

Regardless of the sentence imposed, if the conviction can be sustained on one Count, it will be of academic interest as to the remaining counts.

Nonetheless, Sammarco, in Counts 2 and 3 is charged with a violation of Title 18 USC § 2387 and 2. The evidence must be viewed in a light most favorable to the prosecution. Cf. UNITED STATES V. ERB, 543 F2d 438 at 446. The fact that Sammarco did not prepare, sign or submit any of the documents does not defeat the verdict.

Again, out of the witness, Melonas, came testimony to the effect that if he came up with the seed money, he would (a) get all of his money back and a profit; and (b) the scheme was that he would get his money back through salary. While the defendant may dispute the conclusions drawn from this, it was clear from the evidence that salaries were to be paid out of the administrative charges of six cents per lunch by the Department of Agriculture.

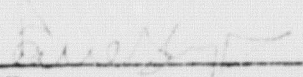
There was evidence from which argument was made that Sammarco was paid for doing little or no work and sometimes for not showing up at all. Under the ERB rationale, supra, that is enough to sustain a claim of aiding and abetting.

CONCLUSION

Counsel respectfully represents that there have been extensive discussions with the Defendant-Appellant concerning this appeal. Appellant knows clearly the view expressed herein and, further, he understands the underlying principles set forth.

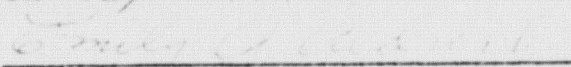
It has been bluntly explained that there does not exist a bona fide basis to argue for reversible error.

Respectfully submitted,



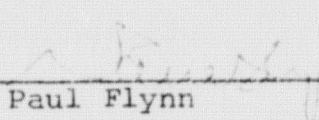
W. Paul Flynn

Subscribed and sworn to
on Sept 8, 1977



Notary Public My Commission Expires March 31, 1981

I certify that a copy of this Memorandum was mailed to all counsel for the co-defendants, and the United States Attorney, #1 St. Andrews Plaza, New York, New York on even date.



W. Paul Flynn

APPENDIX

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0848
x 0208 ad

SAMMARCO, JOHN

05 31 76 0844 05

US DISTRICT COURT
18:371
18:287 & 2

Consp. to commit offenses against U.S.
False claims against U.S. Agency.

2,3

II. KEY DATES & INTERVALS

ARREST OF	INDICTMENT	ARRAIGNMENT	SENTENCE
U.S. Custody Rec'd 8-31-76	Information 8-31-76	9-9-76	11-24-76
Summons Served	Indict Waved	9-9-76	12-6-76
First Appearance	In Charging District		1-17-77

Search Arrest Summons First Appearance U.S. District Court	INDEXED FILED SERVED FILED FILED	DATE IN DISTRICT MAGISTRATE INITIAL APPEARANCE PRELIMINARY EXAMINATION FIRST APPEARANCE INDICTMENT TRIAL SENTENCE	JUDGE CLERK DEPT. OF CORRECTIONS DEPT. OF SOCIAL SERVICES DEPT. OF HEALTH & HUMAN SERVICES DEPT. OF EDUCATION DEPT. OF AGRICULTURE DEPT. OF CONSUMER AFFAIRS DEPT. OF ENVIRONMENTAL CONTROL DEPT. OF FINANCE DEPT. OF GENERAL SERVICES DEPT. OF HEALTH & HUMAN SERVICES DEPT. OF JUSTICE DEPT. OF LABOR DEPT. OF MOTOR VEHICLES DEPT. OF NUTRITION & HUMAN RELATIONS DEPT. OF PUBLIC SAFETY DEPT. OF REGULATION & CONSUMER AFFAIRS DEPT. OF SOCIAL SERVICES DEPT. OF TAXATION DEPT. OF TRANSPORTATION DEPT. OF UTILITIES DEPT. OF VETERANS AFFAIRS DEPT. OF WORKFORCE DEVELOPMENT
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Jeremy G. Epstein
791-0036

Paul Flynn
132 Temple St., New Haven Conn.
(203) 772-1470

DATE	DESCRIPTION	EXCLUDABLE CASE
8-31-76	Filed indictment.	
9-9-76	Deft. (Atty. present) pleads not guilty. Deft. ordered F/P and R.O.R.. Case assigned to Pollack, J... Haight, J.	
09-10-76	Filed notice of appearance of Atty. Paul Flynn.	
09-23-76	Pre trial before Pollack, J.	
11-29-76	Filed deft's motion for relief from prejudicial joinder from separate trial of counts and/or a severance.	2 10-28 E. 1
11-29-76	Filed memo-end. on motion docketed this date. Motion denied. Pollack, J. m/n	
11-29-76	Jury trial began before Judge Pollack.	
11-30-76	Trial cont'd.	
12-1-76	Trial cont'd.	
12-2-76	Trial cont'd.	
12-3-76	Trial cont'd.	
12-6-76	Trial cont'd. and concluded. Deft. found guilty on etc. 1, 2, 3. Bail set at \$10,000 R.O.R. to be co-signed by a family member and to be posted by the close of business 12-8-76. Sent. set for 1-17-77.	

1 a

Filed \$10.00
 Filed on
 1-17-77 Filed Judgment (Atty. W. Paul Flynn) Cts. 1, 2, & 3:
 2 mos. impr. ea. ct. conc. This sent. to run concs.
 w/sent. imposed on 12-24-74 WK. Deft. cont'd. on
 present bail until 1-24-77, etc. Pollack, J.
 issued all copies.
 01-19-77 Filed Corrected Judgment (judgment of 1-17-77 is
 corrected) Cts. 1, 2, 3 - 2-yrs impr. ea. ct. conc.
 Sent. to run concs. w/sent. imposed 12-24-74 WK
 and is concs. to any terms of confinement imposed
 by WK for viol. of said prob. Deft. cont'd. on
 bail until 1-24-77, etc. Pollack, J. issued all
 copies
 01-21-77 Filed deft's notice of motion re: appointment of
 counsel, waiver of fees, etc.
 01-21-77 Filed motion to ~~withd~~ stay surrender
 of senc, etc.
 01-21-77 Filed deft's notice of appeal from judgment of
 1-17-77. Mailed copies

A TRUE COPY

RAYMOND E. DUNHAM, CLERK

[Signature]
Deputy Clerk

INDICTMENT

The Grand Jury charges:

INTRODUCTION

1. In enacting Title 42, United States Code, Section 1751 et seq., The National School Lunch Act, the Congress of the United States empowered the United States Department of Agriculture to provide food to children participating in non-profit school lunch programs.

2. Pursuant to Title 42, United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Service Programs for Children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.

3. During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations, designated as service institutions under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States.

4. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York. NIP

5. At all times relevant herein, BARTHOLOMEW BUIGUES, the defendant, was chairman of the board of Youth In Government. NIP

6. In July and August, 1975, Youth In Government, pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Service Program for Children in the Borough of Manhattan in New York City. ex

7. During July and August, 1975, ANGELO PUIG, the defendant, was employed as the director of the Special Summer Food Service Program of Youth In Government. NIP

8. During July and August, 1975, IRMA ANES, the defendant, was listed on the books of Youth In Government as its "administrative chief."

9. During July and August, 1975, SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, were listed on the books of Youth In Government as "site monitors". NIP

COUNT ONE

10. From on or about the 1st day of November, 1974, up to and including the 1st day of January, 1976, in the Southern District of New York and elsewhere, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully,

wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 287.

OBJECTS OF THE CONSPIRACY

11. It was part of said conspiracy that the defendants would and did agree to defraud the United States and a department and agency thereof, to wit, the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

12. It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, "Food and Nutrition Service Reimbursement Vouchers", knowing such claims to be false, fictitious, and fraudulent.

MEANS OF THE CONSPIRACY

13. Among the means by which the defendants would and did carry out the conspiracy were the following:

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the defendant, would and did hire IRMA ANES, the defendant, as "administrative chief" of Youth In Government's Special Summer Food Services Program at a salary of \$200 per week.

(b) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, as "site monitors" of Youth In Government's Special Summer Food Services Program at salaries of \$110 per week.

(c) While supposedly working as "administrative chief" of the Special Summer Food Services Program, IRMA ANES, the defendant, would and did work full time at Querer, Inc., a day care center located at 391 East 149th Street, Bronx, New York.

(d) While supposedly working as a "site monitor" of the Special Summer Food Services Program, SUSAN HOROWITZ, the defendant, would and did work full time at Arawak Consulting Corporation, 210 East 86th Street, New York, New York at an annual salary of \$12,000 per year.

(e) Although listed as employees of Youth In Government, JOHN SAMMARCO, IRMA ANES and SUSAN HOROWITZ, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

(f) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, although aware that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

(e) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, would and did cause a payroll record book to be kept listing the wages and hours of the employees of the Special Summer Food Services Program, in which book it was recorded that JOHN SANTIARCO, IRMA ANES, and SUSAN HOROWITZ each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

(h) In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about January, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at 1920 McGraw Avenue, Bronx, New York, to organize the Special Summer Food Services Program for Youth In Government.
2. In or about May, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program for Youth In Government.

3. On or about the 27th day of June, 1975, SUSAN HOROWITZ filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975, and continuously thereafter up to and including the 16th day of April, 1976, SUSAN HOROWITZ, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86th Street, New York, N.Y.

5. During July and August, 1975, IRMA ANES, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149th Street, Bronx, New York.

6. During July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, wrote weekly salary checks to IRMA ANES, JOHN SALTARCO, and SUSAN HOROWITZ.

7. In July and August, 1975, IRMA ANES, the defendant, made entries in the payroll book of Youth In Government which stated that IRMA ANES, SUSAN HOROWITZ, and JOHN SALTARCO had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for August, 1975.

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10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The ~~Grand~~ Jury further charges:

1. Each and every allegation of the Introduction of this Indictment is hereby repeated, realleged, and incorporated by reference in each of Counts Two and Three of this Indictment as though fully set forth therein.

2. On or about the dates hereinafter set forth, in the Southern District of New York, BARTHOLOMEW BUIQUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAIMARCO, the defendants, unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent:

<u>COUNT</u>	<u>DATE</u>	<u>MONTH COVERED BY VOUCHER</u>
2	August 22, 1975	July, 1975
3	August 29, 1975	August, 1975

(Title 18, United States Code, Sections 287 and 2.)

FOREMAN

ROBERT E. FISKE, JR.
United States Attorney

99 a

addition to their work for the Summer Lunch Program?

A Yes.

MR. HONIG: No further questions.

MR. FLYNN: No questions.

REDIRECT EXAMINATION

BY MR. EPSTEIN:

Q In fact, with regard to Miss Horowitz, Mr. Puig stated she worked full-time?

A That is correct.

MR. EPSTEIN: Nothing further.

RECROSS-EXAMINATION

BY MR. HONIG:

Q Was there any suggestion of hours, when he said "full-time"?

A I didn't know what her hours were except for the fact she worked full-time.

MR. HONIG: Thank you.

THE COURT: You may step down.

(Witness excused.)

MR. EPSTEIN: The Government calls Angelo Melonas.

ANGELO MELONAS, called as a witness by the Government, being first duly sworn, testified as follows:

MR. EPSTEIN: Your Honor, this testimony is only

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being offered against Mr. Sammarco.

THE COURT: The jury will accordingly understand that this testimony relates only to the defendant Sammarco and is not to be attributed to the other two, either by way of connection or otherwise.

MR. HAMMER: Three, if your Honor please.

THE COURT: The other defendants, I should have said.

MR. HONIG: Four, if your Honor please.

THE COURT: Excuse me, I meant the clients of the other two lawyers.

DIRECT EXAMINATION

BY MR. EPSTEIN:

Q Mr. Melonas, what is your occupation?

A I am a special agent with the Federal Bureau of Investigation.

Q How long have you been with the FBI?

A Six-and-a-half years.

Q Where is your office?

A New Rochelle.

Q Directing your attention to August 4, 1976, were you at work on that day?

A Yes, I was.

Q Directing your attention to approximately 9 in

11a

the morning, where were you at that time?

A I traveled to Port Chester, New York, to serve a subpoena on Mr. John Sammarco.

Q Who, if anyone, was with you?

A Another special agent, Richard Nalley.

Q Did there come a time when you arrived at Mr. Sammarco's residence?

A Yes, we did. We found Mr. Sammarco at home and we spoke to him regarding his cooperation with us.

Q Mr. Melonas, what did you say to Mr. Sammarco and what did he say to you?

MR. FLYNN: If your Honor please, with respect to the first count, I would object. This recitation covers a period August 4, 1976. I assume, based on your Honor's earlier rulings, it would be applicable to the substantive count only, and I object to it on the first count.

THE COURT: You have no objection to that?

MR. EPSTEIN: It's being offered as to all the counts, your Honor, but only against Mr. Sammarco.

THE COURT: It may be offered as against Mr. Sammarco only.

Go ahead.

Would you repeat the date again?

Q August 4, 1976, is that correct?

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Melonas-direct

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A That is correct.

Q Continue, Mr. Melonas.

A I asked Mr. Sammarco if he would accompany us to New Rochelle, to the Bureau offices in New Rochelle, to be interviewed by two U.S. Attorneys who were awaiting his arrival should he deem -- should he want to come.

Q What was his response to that?

A He said he would be glad to cooperate and then he asked what the nature of our interest in him was, at which time I told him it was in regards to a criminal matter of which he may have some knowledge, and that it involved Title 18, Section 371 of the United States Code.

Q What did Mr. Sammarco say?

A Again, he said he would gladly cooperate. Then he proceeded to get dressed to accompany us.

Q What happened after that?

A Shortly thereafter, he expressed a little reluctance and I told him at that time that we would like his voluntary cooperation, and if he did not wish to accompany us, that we did have a subpoena to serve on him. He said the subpoena would not be necessary and he would gladly cooperate, and we proceeded to New Rochelle.

Q You hadn't placed him under arrest?

A No, I did not.

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2 Q Did there come a time when you arrived at your
3 office in New Rochelle?

4 A Yes, sir.

5 Q Where is your office located?

6 A At the Sheraton Hotel, 1 Sheraton Plaza.

7 Q What happened when you arrived at your office?

8 MR. FLYNN: I will object at this juncture, if
9 the Court please, on the ground that the testimony of the
10 Agent, as I understand it, is that he advised the subject
11 that if he did not voluntarily accompany him, he would
12 serve him with a subpoena; but there is no evidence that
13 subpoena was ever served, and it is an involuntary ride, I
14 suggest.

15 THE COURT: Objection overruled.

16 A Could I have the question, again?

17 Q Did there come a time when you arrived at your
18 office, Mr. Melonas?

19 A Yes, at that time we introduced Mr. Sammarco to
20 Assistant U. S. Attorneys Bart Schwartz and yourself.

21 Q Where did this all happen?

22 A This happened in our offices in an interview room.

23 Q What, if anything, happened at the outset of the
24 interview?

25 A You, Mr. Epstein, advised Mr. Sammarco of his

14a

1 constitutional rights, those being: He had the right to
2 remain silent; that he had the right to an attorney; that
3 anything he may say may be used against him in court; that
4 he had a right to an attorney, to have him present with
5 him; that if he did not have an attorney, one would be
6 appointed for him by the Court. And Mr. Sammarco replied
7 to that: that he came, voluntarily, and he would cooperate.
8

9 Q Did Mr. Sammarco do anything at that point?

10 A Yes, he did. He placed a telephone call to an
11 attorney in New Haven, I believe.

12 Q Do you recall what he said?

13 A No, I don't.

14 Q Did he simply leave a message?

15 A As I recall, the person he called was not in
16 and he left a number or left a message of some sort, but
17 I don't recall what it was.

18 Q Was Mr. Sammarco asked about Youth In Government?

19 A Yes, he was.

20 Q Was he asked about the 1975 Summer Lunch Program?

21 A Yes, he was. And he stated he was employed in
22 the Summer Lunch Program and that he had gotten involved
23 in it through an acquaintance of his, a man by the name
24 of Frank Cedo, who introduced him to Mr. Bart Buigues.

25 Q Did he say how long he had known Mr. Buigues?

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2 A I don't know, specifically. It is an impression,
3 that he had met him just in June.

4 MR. FLYNN: I move to strike the witness'
5 impression, your Honor.

6 THE COURT: Strike out "the impression."

7 Was there anything said at the time?

8 THE WITNESS: My understanding was that he had
9 met him in June of '75 at a Young Puerto Rican Republican
10 Party meeting of some sort.

11 Q Was Mr. Sammarco asked how he became involved in
12 the Youth In Government Summer Lunch Program?

13 A Yes, he was.

14 Q What was his response?

15 A He stated that Mr. Buigues had approached him
16 and asked him for an investment of a thousand dollars
17 for the Summer Lunch Program and told him this thousand
18 dollars would be returned to him through the program and
19 that he would make a profit on his money; and Mr. Sammarco
20 told him that he didn't have the money but he could possibly
21 get it through his family.

22 Q Did Mr. Sammarco define, further, what Mr.
23 Buigues meant by "it would be returned to him through the
24 program"?

25 A Yes, he did, through his salary.

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Melonas-direct

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Q Did Mr. Sammarco comment, further, about the thousand dollars?

A Yes, he did. He stated he didn't have the money, that he would try to get it through his family. And he made the comment that he had telephoned Mr. Cedo as to the advisability of investing his thousand dollars in the program, just for a summer job which Mr. Buigues had promised him.

Q Did Mr. Sammarco state he had obtained the thousand dollars?

A Yes, he did. This was, as I recall, the middle of June.

Q June of what year?

A Of 1975. He obtained the thousand dollars from one of his aunts, in the form of a bank draft, which he tried to give to Mr. Buigues, which Mr. Buigues would not accept. He stated he wanted cash. Mr. Sammarco stated he converted the bank draft to cash and that is what he gave Buigues.

Q Did he say how he gave the cash to Mr. Buigues?

A I don't recall.

Q Did he mention an envelope?

MR. FLYNN: Objection.

A I don't recall.

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2 MR. FLYNN: Objection to the form of the question.
3 The witness said he doesn't recall, and then the suggestion
4 of the method of delivery is coming from the prosecutor.

5 THE COURT: Would you strike out the answer? And
6 if there is a question to be asked, you may ask it. I
7 just don't want to re-emphasize it by having anything
8 read.

9 Q Did Mr. Sammarco state, when he began to work for
10 Youth In Government?

11 A Yes, he did. He stated, shortly after paying --
12 well, he stated, around the 26th or 27th of June of 1975,
13 he received a telephone call which requested him to report
14 to work the 30th of June of 1975.

15 Q Did he state that he did report to work?

16 A Yes, he did.

17 Q Did he describe the nature of his responsibilities
18 at Youth In Government?

19 A Yes. He said his first day--when he reported
20 the first day, he was given his job classification, which
21 was that of a coordinator or assistant coordinator of the
22 program; and that he was introduced to a few people; and
23 that his job was to check, to investigate violations in
24 the program.

25 Q Was Mr. Sammarco asked about his daily routine

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2 in his job?

3 A Yes, sir; and he stated his daily routine would
4 be that he would report to 2176 Amsterdam Avenue, which was
5 the headquarters for the program, and he would receive a
6 list of violations from a man that he knew only as "Angelo,"
7 and he would take the violations and investigate them that
8 day.

9 Q Did he state anything about the frequency with
10 which he attended the office?

11 A Yes, he did. He stated that he was at the office
12 five days a week for the eight-week period and his hours
13 were from 10 a.m. to around 2, 2:30 p.m. He also mentioned
14 that he missed a period of ten days or about ten days
15 during that eight-week period.

16 Q Was it ten consecutive days that he stated he
17 missed?

18 A I don't recall.

19 Q Was Mr. Sammarco asked anything about Susan
20 Horowitz?

21 A Yes, he was.

22 MR. HONIG: Objection.

23 THE COURT: This is received solely as against
24 the defendant Sammarco and is not to be received as
25 related to or connected with any of the other defendants.

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2 A He stated that he worked -- he met a Susan
3 Horowitz in the program, through a man by the name of
4 Joel Barkan, whom he, in turn met through Bart Buigues; and
5 that Miss Horowitz, even though she received checks the
6 whole summer for her work, he only saw her about three days
7 during the program.

8 Q Mr. Melonas, was Mr. Sammarco asked how often
9 he was paid?

10 A I don't recall. The only thing I can recall
11 there is that he was paid \$175 a week initially, and it
12 was dropped to \$110 a week at a later date.

13 Q Did he state he was actually paid \$175 or that
14 he was told he would be paid that?

15 A I don't recall.

16 Q Was Mr. Sammarco asked about his car?

17 MR. FLYNN: Objection. Irrelevant and immaterial

18 THE COURT: I don't know whether you have a
19 completed question. If you have a completed question, I
20 will sustain the objection unless the relationship of the
21 particular inquiry in the question is connected with some-
22 thing we are interested in.

23 MR. EPSTEIN: Is the objection to that question
24 sustained?

25 THE COURT: I sustain the objection to that

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question, yes, if it stops there.

Q Was Mr. Sammarco asked about any recent conversations with Mr. Buigues -- and by "recent," I mean more recent than the summer of 1975?

A Yes, he was. He stated that he had talked with Mr. Buigues by telephone and, in fact, he had taped a telephone conversation with Mr. Buigues, I think, in January of 1976; and that at that time Mr. Buigues told him that the Summer Lunch Program was under investigation and that he should not worry about it.

He also stated in this conversation that Mr. Sammarco would still receive his money through the program, or from the program, I should say; that he still should not worry about the investigation.

Q Mr. Melonas, I now direct your attention to November 30, 1976, yesterday. Where were you yesterday?

A Outside in the hallway.

Q Did there come a time when Mr. Sammarco approached you?

A Yes, he did.

Q What, if anything -- did he speak to you?

A Yes, he did. It started off as amenities. I nodded to him; he nodded to me. And he came over and asked me to refresh his memory as to where he had seen me

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1 before and I told him that I was one of the agents that
2 had interviewed him; and he said, "Oh, yes, the FBI"; and
3 I said, "Yes"; and he stated that, you know, "I never
4 would have talked to you before if I had known this would
5 happen," meaning the trial.
6

7 Q Did he say anything else?

8 A Yes, he did. He told me that the statements he
9 had made to me, in my presence, prior, were false.

10 MR. EPSTEIN: No further questions.

11 CROSS-EXAMINATION

12 BY MR. FLYNN:

13 Q Mr. Melonas, you were asked by Mr. Epstein if
14 Mr. Sammarco indicated to you whether he was paid --

15 A Could you speak a little louder?

16 Q -- whether he was paid for his services in the
17 Summer Lunch Program for Youth In Government?

18 A Yes.

19 Q And you said that he was. He said he had been?

20 A Yes.

21 Q You mentioned the sum of \$175. Was that what
22 he said he expected to be paid or what he actually was
23 paid?

24 A My recollection as to what he said was that he
25 received a salary of \$175 a week, initially, and it was

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1 later cut to \$110 a week.

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3 Q Did he tell you, sir, that his function was to
4 investigate violations discovered by the Department of
5 Agriculture at various distribution sites?

6 A No, sir.

7 Q Did he discuss with you, sir, that his job was
8 to go to various distribution sites where violations existed?

9 A He stated to me --

10 Q I understand. I asked you whether or not he said
11 that to you.

12 A He told me he would go to program sites to check
13 out violations.

14 Q Did he indicate the nature of these violations?

15 A He mentioned two violations.

16 Q Did he indicate that the nature of the violations
17 were claims that the food was being consumed off of the
18 premises?

19 A Off-premises consumption, yes.

20 Q Did he also state he would investigate unsanitary
21 conditions?

22 A Yes.

23 Q Did he tell you that he prepared any documents
24 for submission to the Agriculture Department?

25 A No, sir.

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Melonas-cross

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Q Did he tell you that he instructed anyone to prepare any such documents?

A I recall no statement of that nature.

Q Did he ever tell you that he did not show up for work?

A Yes, sir.

Q You mean he was absent for days?

A Yes.

Q Did he tell you he was absent all during the months of July and August?

A No, sir.

Q Did he tell you that he, in fact, went to the various sites and performed that job?

A No, sir.

Q Did you ask him?

A I was not asking the questions.

Q Did anybody ask him?

A I don't recall the question being asked.

Q Did Mr. Sammarco tell you what his hours were at the Summer Lunch Program?

A He told me the hours he was expected to work; yes, sir.

Q Did he tell you that they were approximately 10 until 2?

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2 A Yes, sir.

3 Q Did he indicate to you, sir, that when he arrived
4 at work, someone whom he described as "Angelo" handed him
5 a list or a stack of violations to check out?

6 A Yes.

7 Q Then did he state that he would go to the site
8 of those alleged violations to check them out?

9 A Yes, sir.

10 Q Did he also indicate that he would have a conver-
11 sation with people at the Department of Agriculture?

12 A No, sir. He never made mention of the Department
13 of Agriculture.

14 Q Was he asked?

15 A Not that I know of.

16 Q Was he asked whether or not he had worked for the
17 project without pay?

18 A No, and he volunteered no such information.

19 Q Did you have an understanding that this was a
20 free exchange of inquiry between Mr. Epstein and Mr.
21 Sammarco, or was it Mr. Epstein conducting an interrogation?

22 THE COURT: Sustained.

23 Q Did you understand that Mr. Sammarco could inter-
24rogate during the course of this investigation?

25 A It was completely voluntary on his part.

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Q I didn't ask you that.

A There were no ground rules set down at the beginning of the interview.

Q There was one, wasn't there?

On the way, didn't you tell him, either he came along or you would have him subpoenaed before a grand jury?

A It was voluntary on his part.

Q I am not arguing with you.

Didn't you tell him if he didn't come along, you were going to give him a subpoena to go to a grand jury?

A Yes, I did.

Q As I understand your testimony, sir, he indicated that he would ask his family if they would make the thousand dollars available?

A Yes.

Q Was he asked whether that money was to be used for start-up money or for seed money?

Was he asked that?

A He asked, to what use the thousand dollars would be put.

Q Please, sir.

A In those direct terms, no.

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MR. FLYNN: No further questions.

CROSS-EXAMINATION

BY MR. HAMMER:

Q Mr. Melonas, in your presence, was Mr. Sammarco asked the date upon which he delivered \$1,000 to Mr. Buigues?

A No, not the date per se. He volunteered: the middle of June of 1975.

Q Did you record that in the statement or report, prepared under date of August 13, 1976?

A If it is the four-page 302, yes, it is recorded in there.

Q And he told you or told Mr. Epstein, in your presence, that it was the middle of June of 1975?

A Yes, sir. My recollection is, it was prior to the 26th of June, he gave Mr. Buigues a thousand dollars.

Q Prior to June 26, 1975, is a full six months of time?

A I don't follow your question.

Q My question is: Did he tell you that, in fact, it was the middle of June, 1975 that he gave the \$1,000 to Mr. Buigues, not May or April or March or whenever?

A My recollection is that the payment was made in June, and from the dates that he stated, prior to the 26th, when he got the telephone call to report to work.

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Q That was his language: "The middle of June, 1975 and not prior to June 26, 1975"?

A June 26, 1975 is my language. That is when he told me. That is the statement he made.

Q Sometime prior --

A To his reception of the telephone call asking him to report to work, he paid the thousand dollars; in between that time and the time he first met Mr. Buigues when he requested the money, which was the middle of June.

Q I am having difficulty hearing you.

THE COURT: The reporter will read it to you.

(Answer read.)

Q He said he had met Mr. Buigues for the first time in June, 1975, and it was between that occasion and the telephone call that the money was given; is that my understanding?

A Partially correct. I did not say that he met Mr. Buigues for the first time in the middle of June, 1975. The middle of June is when Mr. Buigues requested the money from him. Between that period and June 26 is when he paid the money.

Q That is your clear recollection?

A Yes, that is my clear recollection.

MR. HAMMER: Thank you, sir.

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THE COURT: Any further questions?

REDIRECT EXAMINATION

BY MR. EPSTEIN:

Q Mr. Melonas, was Mr. Sammarco told at the outset, he was free to leave whenever he wanted to?

A Yes.

THE COURT: Do you wish to examine? I thought you had objected to this area and I sustained your objection, but you are at liberty to go right ahead.

MR. HONIG: In view of your Honor's ruling, that the testimony of this agent --

THE COURT: Please, I don't want you to review my rulings for the jury's benefit. I will do all of the legal statements. If you have any thought about it that you wish to examine on, you may do so, otherwise there is no occasion for a speech.

MR. HONIG: Okay, just a few questions.

CROSS-EXAMINATION

BY MR. HONIG:

Q Mr. Malenas --

A Melonas, sir.

Q -- you never interviewed Susan Horowitz, did you?

A No, I did not.

Q Did anyone in your agency interview her?

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A I can't make that statement. I don't know.

Q Did anyone in your office in New Rochelle?

A Not to my knowledge.

Q You didn't ask, or anyone present on the day, of this Sammarco appointment or interview? You didn't ask at what level Miss Horowitz was working or did Mr. Epstein or anybody interviewing Sammarco?

Do you understand my question?

A No, I don't.

Q Where she was doing her work for Youth In Government; did you ask that question?

A Where she was doing that work?

Q Yes.

A No, sir.

Q Was the question asked: What function she had in Youth In Government?

A Not to my knowledge.

Q Was the question asked: What her hours of work were?

A No, sir.

Q Was the question asked: Where she would have to go to take care of the work that was assigned to her by Youth In Government?

A No.

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2 MR. HONIG: Thank you.

3 THE COURT: Anything else?

4 REDIRECT EXAMINATION

5 BY MR. EPSTEIN:

6 Q Was Mr. Sammarco asked how Miss Horowitz received
7 the job?

8 MR. HONIG: Objection. Asked and answered.

9 THE COURT: I didn't get that full question.

10 (Question read.)

11 THE COURT: You may answer.

12 A He was asked, and he stated, she received the
13 job through Joel Barkan, who he thought was Miss Horowitz's
14 boy friend.

15 MR. HONIG: I move to strike that out.

16 THE COURT: Motion is denied in view of the
17 limited function of this examination, except to the extent
18 that the door may have been opened by Mr. Honig, not in
19 this area.

20 Q Did Mr. Sammarco state what his knowledge was
21 of the connection between Mr. Barkan and Mr. Buigues?

22 A Yes, he did.

23 MR. FLYNN: Your Honor, I should object. This
24 is no part of my cross. It should not be used and admitted
25 against my client. I believe, my cross was far more limited

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Melonas-redirect

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than this.

THE COURT: I think that last question would really go in respect to Count 1 and I have given the jury a limiting instruction on that, so we will rule that out.

MR. EPSTEIN: Thank you, your Honor, I have no further questions.

THE COURT: Thank you, Mr. Melonas; you are excused.

(Witness excused.)

MR. EPSTEIN: Your Honor, the Government rests.

THE COURT: All right, ladies and gentlemen, that gives you a chance to rest for the day, and if it wouldn't be an inconvenience -- and here, I am consulting you, I am not telling you -- could you all come in at 9:30 tomorrow?

MR. FLYNN: Your Honor, it is a considerable problem for me.

THE COURT: Ten o'clock?

MR. FLYNN: Please.

THE COURT: All right, ten o'clock tomorrow morning.

(The jury left the courtroom.)

THE COURT: All right, gentlemen.

MR. HAMMER: Judge Pollack, I move, most respectfully, on behalf of the following: Bart Buigues, Angelo

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CHARGE OF THE COURT

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IS v Buigues 1
76 Cr. 864
11/29/76 2

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(Pollack, M.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen of the jury:

First, I want to thank you for your careful attention, which has been clearly exhibited. The case is now about to be placed in your hands. You have heard the arguments of counsel as to what each believes has been established or not established in the evidence. Of course, it is for you to say what the evidence was and that will guide your deliberations.

The charges against the five defendants, as set out in the indictment, consist of three counts against each one of the defendants. All are accused of having undertaken or aided and abetted the conduct charged as offenses herein. I will discuss each count, in turn.

It is important that you keep clearly in mind, as you consider this case, what are the charges in the indictment. Alleged unearned salaries are the keys to the contentions involved herein. I will, therefore, read the charges to you from the indictment.

The Grand Jury charges:

"One, in enacting Title 42 of the United States Code, Section 1751 and following, the National School Lunch Act, the Congress of the United States empowered the United

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States Department of Agriculture to provide food to children participating in non-profit school lunch programs. Pursuant to Title 42 of the United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Services Programs for children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.

"During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations designated as 'service institutions' under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York. At all times relevant herein, Bartholomew Buigues, the defendant, was chairman of the board of Youth In Government.

"In July and August, 1975, Youth In Government,

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pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Services Program for children in the Borough of Manhattan and in New York City.

"During July and August, 1975, Angelo Puig, the defendant, was employed as the director of the Special Summer Food Services Program of Youth In Government.

"During July and August, 1975, Irma Anes, the defendant, was listed on the books of Youth In Government as its administrative chief.

"During July and August, 1975, Susan Horowitz and John Sammarco, the defendants, were listed on the books of Youth In Government as site monitors.

"From on or about the first day of November, 1974, up to and including the first day of January, 1976, in the Southern District of New York and elsewhere, Bartholomew Buigues, Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit: violations of Title 18 of the United States Code, Section 287.

"It was part of said conspiracy that the defendants

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2 would and did agree to defraud the United States and the
3 department and agency thereof, to wit: the United States
4 Department of Agriculture, by causing the United States
5 Department of Agriculture to reimburse Youth In Government
6 for work supposedly performed by certain of its employees
7 in the Special Summer Food Services Program, whereas, in
8 truth and in fact, said employees performed little or no
9 work and were not entitled to the salaries paid them.

10 "It was further part of said conspiracy that the
11 defendants would and did make and present to the United
12 States Department of Agriculture, a department and agency
13 of the United States, claims upon and against the United
14 States, to wit: Food and Nutrition Service, reimbursement
15 vouchers, knowing such claims to be false, fictitious
16 and fraudulent.

17 Among the means by which the defendants would
18 and did carry out the conspiracy were the following:

19 "In June, 1975, Bartholomew Buigues, the defendant,
20 would and did hire Irma Anes, the defendant, as administra-
21 tive chief of the Special Summer Food Services Program, at
22 a salary of \$200 a week.

23 "In June, 1975, Bartholomew Buigues, the defendant,
24 would and did hire Susan Horowitz and John Sammarco, the
25 defendants, as site monitors of Youth In Government Special

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1 Summer Food Services Program at salaries of \$110 a week.

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3 "While supposedly working as administrative chief
4 of the Special Summer Food Services Program, Irma Anes,
5 the defendant, would and did work full-time at Querer, Inc.,
6 a day care center located at 391 East 149 Street, Bronx,
7 New York, while supposedly working as a site monitor for
8 the Special Summer Food Services Program.

9 "Susan Horowitz, the defendant, would and did
10 work full-time at Arawak Consulting Corporation, 210 East
11 86 Street, New York, New York, at an annual salary of
12 \$12,000 per year.

13 "Although listed as employees of Youth In Govern-
14 ment, John Sammarco, Irma Anes and Susan Horowitz, the
15 defendants, would and did fail to report regularly at their
16 jobs in the Special Summer Food Services Program.

17 "In July and August, 1975, Bartholomew Buigues
18 and Angelo Puig, the defendants, although aware that John
19 Sammarco, Irma Anes and Susan Horowitz, the defendants, were
20 not working regularly in the Special Summer Food Services
21 Program, would and did cause salary checks to be issued
22 weekly to these individuals.

23 "In July and August, 1975, Bartholomew Buigues
24 and Angelo Puig, the defendants, would and did cause a pay-
25 roll record book to be kept, listing the wages and hours of

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2 the Special Summer Food Services Program, in which book it
3 was recorded that John Sammarco, Irma Anes and Susan Horowitz
4 each worked seven hours per day, five days per week, for
5 the duration of the Special Summer Food Services Program.

6 "In August, 1975, Youth In Government would and
7 did file claims with the United States Department of
8 Agriculture for expenses incurred in operating its Special
9 Summer Food Services Program, which expenses included the
10 salaries of employees."

11 The indictment, then, contains a recitation of
12 what is known as "overt acts," which I will read to you
13 a little later in these instructions.

14 I have read to you Count 1, thus far. Counts
15 2 and 3 read as follows:

16 The Grand Jury further charges:

17 "Each and every allegation of the introduction
18 of this indictment is hereby repeated, realleged and
19 incorporated by reference in each of Counts 2 and 3 of
20 this indictment as though fully set forth therein.

21 "On or about the dates hereinafter set forth in
22 the Southern District of New York, Bartholomew Buigues,
23 Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco,
24 the defendants, unlawfully, willfully and knowingly would
25 and did make and present and cause to be made and presented

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2 to the United States Department of Agriculture, a department
3 and agency of the United States, claims upon and against
4 the United States, to wit: Food and Nutrition Service
5 reimbursement vouchers, knowing such claims to be false,
6 fictitious and fraudulent."

7 In Count 2, the date of that presentation was
8 August 22, 1975, for the month covered by the voucher, July,
9 1975; and in Count 3, the presentation was on August 29,
10 1975, the month covered by that voucher, August, 1975.

11 As you have heard from the indictment -- and I
12 should tell you that a separate crime or offense is charged
13 against each of the defendants in each of the three counts
14 of the indictment -- each offense and the evidence pertaining
15 to it should be considered separately by the jury. The
16 fact you may find all or some of the accused guilty or not
17 guilty of one of the offenses charged, should not control
18 your verdict as to any other offense charged against any
19 of the defendants. It is your duty to give separate personal
20 consideration to the case of each individual defendant.
21 When you do so, you should analyze what the evidence in the
22 case shows with respect to that individual, leaving out
23 of consideration, entirely, any evidence omitted solely
24 against some other defendant or defendants. Each defendant
25 is entitled to have his or her case determined from evidence

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2 as to his or her own acts and statements and conduct, and
3 any other evidence in the case which may be applicable to
4 him or to her.

5 Now, in more detail, I turn to the first count,
6 which is the so-called "conspiracy count."

7 The first count of this indictment is a conspiracy
8 count. Before you may convict any defendant under this
9 count, the following essential elements must be established
10 beyond a reasonable doubt by the Government:

11 First, you must be satisfied that the conspiracy
12 charged did in fact exist. That is, that sometime between
13 November 1, 1974 and January 1, 1976, a scheme, an agreement
14 existed between defendants on trial and any other co-conspir-
15 ator, whether or not on trial or named in the indictment,
16 to defraud the Government and one of its agencies, by
17 claims for reimbursement of unearned salaries in the Special
18 Food Services Program.

19 Second, the Government must establish a specific
20 intent of the defendant under consideration to violate the
21 substantive statute; that is, the law that I have read to
22 you that applied; that is, to defraud the United States
23 or to submit to the United States Department of Agriculture,
24 false, fictitious, fraudulent claims.

25 Third, that the defendant under consideration,

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1 knowingly and willfully associated himself or herself with
2 a conspiracy; and
3

4 Fourth, that one of the conspirators, anyone,
5 knowingly committed at least one or more of the overt acts
6 set forth in the indictment at or about the time and place
7 alleged.

8 You must first consider whether, in fact, the
9 scheme or conspiracy charged in this indictment existed.
10 What is a conspiracy? A conspiracy is a combination or
11 scheme or agreement of two or more persons, by concerted
12 action, to accomplish a criminal or unlawful purpose or
13 some purpose not in itself criminal or unlawful, by criminal
14 or unlawful means.

15 The gist of the crime of conspiracy is the
16 unlawful combination or agreement ~~scheme~~, to violate
17 the law. Whether or not the defendant accomplished what it
18 is alleged the defendant conspired to do, is immaterial to
19 the question of guilt or innocence of conspiracy. The
20 crime of conspiracy relates to scheming to do the unlawful
21 thing.

22 A conspiracy has sometimes been called "a partner-
23 ship in criminal purpose in which each member becomes the
24 agent of every other member." However, to establish a
25 conspiracy, the Government is not required to show that two

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2 or more persons sat around a table and entered into a solemn
3 compact, orally or in writing, stating that they have
4 formed a conspiracy to violate the law, setting forth
5 details of the plan, the means by which the unlawful project
6 is to be carried out, or the part to be played by each
7 conspirator. Indeed, it would be extraordinary if there
8 were such a formal document or specific oral agreement.
9 Your common sense will tell you that, when people in fact
10 undertake to enter into a criminal conspiracy, much is
11 left to the unexpressed understanding.

12 Conspirators usually do not reduce their agree-
13 ment to writing or acknowledge them before a notary public,
14 nor do they publicly broadcast their plans. From its very
15 nature, a conspiracy is almost always characterized by
16 secrecy, rendering detection difficult.

17 Thus, it is sufficient if two or more persons
18 in any manner, through any contrivance impliedly or tacitly,
19 come to a common understanding to violate the law. Express
20 language or specific words are not required to indicate
21 assent or attachment to a conspiracy. On the other hand,
22 proof concerning the accomplishment of the object of a
23 conspiracy may be the most persuasive evidence of the
24 actual existence of the conspiracy itself; and to simplify
25 this a bit more, success of the venture is the best proof

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1 rk1m 11

2 of the agreement.

3 In determining whether there has been an unlawful
4 scheme or agreement, you may judge acts and conduct of the
5 alleged members of the conspiracy which are done to carry
6 out an apparent criminal purpose. The old adage, "Actions
7 speak louder than words," is applicable here. Usually,
8 the only evidence available is that of disconnected acts
9 on the part of the alleged individual conspirators, which
10 acts, however, when taken together in connection with each
11 other, and with the reasonable inferences flowing therefrom,
12 show a conspiracy or agreement to secure a particular
13 result as satisfactorily and conclusively as more direct
14 proof.

15 If, upon such consideration of all the evidence,
16 direct and circumstantial, you find beyond a reasonable
17 doubt that the minds of the alleged conspirators met in an
18 understanding way and that they agreed, as I have explained
19 a conspiratorial agreement to you, to work together in
20 furtherance of the unlawful scheme alleged in the indict-
21 ment, then proof of the existence of a conspiracy has been
22 established.

23 In this connection, it is not necessary for the
24 Government to prove the success, nor completion of the
25 object of the conspiracy. As the conspiracy is basically

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1 rklm 12

2 the agreement to violate the law, it may exist even though
3 the final objectives were never accomplished.

4 The period of time embraced by the indictment
5 for the existence of the alleged conspiracy runs from on
6 or about November 1, 1974 to January 1, 1976. It is not
7 necessary for the Government to prove that the conspiracy
8 started and ended on those specific days. It is sufficient
9 if you find that, in fact, the conspiracy was formed and
10 that it existed for some substantial time within the period
11 set forth in the indictment and that any one of the several
12 acts mentioned in the overt act section of the indictment
13 was committed during that period.

14 The indictment charges that the conspiracy in
15 question had two unlawful objects or goals:

16 The first was to defraud the United States and
17 one of its departments, the Department of Agriculture, by
18 causing that department to reimburse an organization called
19 "Youth In Government" for work supposedly performed by
20 its employees that had not been in fact performed.

21 The second object of the conspiracy, charged in
22 the indictment, was to violate Title 18 of the United
23 States Code, Section 287, which makes a crime the filing
24 of false, fictitious and fraudulent claims against the
25 United States.

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rklm 13

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2 It is not necessary that the Government prove
3 that there was a conspiracy to accomplish both of those
4 objects. The Government will have sustained its burden of
5 proof on the conspiracy count if it has proved beyond a
6 reasonable doubt that there was a conspiracy to accomplish
7 at least one of these illegal goals.

8 In order to find there was a conspiracy to defraud
9 the United States, you may, but need not find that the
10 Government lost money or was intended to lose money as
11 the result of the conspiracy. Defrauding in this connection
12 means interfering with, or obstructing one of the lawful
13 functions of the United States Government -- in this case,
14 the function of the United States Department of Agricul-
15 ture, in administering the Special Summer Food Services Program--
16 by deceit, craft or trickery or by means that are dis-
17 honest. A conspiracy that included as one of its goals,
18 submission of fraudulent or false information to a depart-
19 ment of the United States, such as the Department of
20 Agriculture, in a matter within its jurisdiction, would
21 be a conspiracy to defraud the United States.

22 Once satisfied that the conspiracy charged
23 existed, you must ask yourself who its members were. In
24 deciding whether a defendant was a member of the conspiracy,
25 you should consider whether on all the evidence, the

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defendant knowingly and purposely entered the conspiracy.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with an awareness of at least some of the basic aims and purposes of the conspiracy? Knowledge may be inferred from a defendant's conduct, from his or her acts, from his or her statements and from all the surrounding circumstances. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify the inference of knowledge on his or her part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that a defendant's mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that a defendant participate at some time in the course of the scheme, not necessarily from the inception, but any time during its course, with knowledge of at least some of the purposes of the conspiracy and with specific intent to aid and participate in the accomplishment of those unlawful

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1 rklm 15

2 ends.

3 Once you have found a conspiracy to exist and a
4 defendant to have knowingly participated in it, the extent
5 of his or her participation has no bearing on the guilt
6 or innocence of that defendant. The guilt of a conspirator
7 is not measured by the extent or duration of his or her
8 participation. Even if a defendant participated in it to
9 a degree more limited than that of another alleged co-
10 conspirator, that defendant is equally culpable so long as
11 that defendant was in fact a conspirator.

12 As I have already mentioned, the fourth element
13 of the crime of conspiracy is that an overt act, to effect
14 the objective of the conspiracy, be committed by at least
15 one of the co-conspirators.

16 An overt act is any step, action or conduct out
17 in the open. That is what overt means; acts which are taken
18 to achieve or further the objective of the conspiracy.

19 The alleged overt acts as charged in the indict-
20 ment are as follows:

21 for furtherance of said conspiracy and to effect
22 the objects thereof, the following overt acts, among others,
23 were committed in the Southern District of New York:

24 1: In or about January, 1975, Bartholomew
25 Buiges and Angelo Puig, the defendants, held a meeting at

1 rklm 16

2 1920 McGraw Avenue, Bronx, New York, to organize a Special
3 Summer Food Services Program for Youth In Government.

4 Another overt act marked "2," in or about May,
5 1975, Bartholomew Buigues and Angelo Puig, the defendants,
6 held a meeting at The Latin Beat, 508 Van Nest Avenue,
7 Bronx, New York, to organize further the Special Summer
8 Food Services Program in Youth In Government.

9 3. On or about the 27th day of June, 1975, Susan
10 Horowitz filled out an application for employment in the
11 Special Summer Food Services Program of Youth In Government.

12 4. From on or about the 7th day of July, 1975
13 and continuously thereafter up to and including the 16th
14 day of April, 1976, Susan Horowitz, the defendant, was
15 employed as a staff associate at Arawak Consulting Corpora-
16 tion, 210 East 86 Street, New York.

17 5. During July and August, 1975, Irma Anes, the
18 defendant, was employed as a bookkeeper and administrative
19 assistant at Querer, Inc., 391 East 149 Street, Bronx, New
20 York.

21 6. During July and August, 1975, Bartholomew
22 Buigues and Angelo Puig, the defendants, wrote weekly
23 salary checks to Irma Anes, John Sammarco and Susan
24 Horowitz.

25 7. In July and August, 1975, Irma Anes, the defendant,

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2 made entries in the payroll book of Youth In Government,
3 which stated that Irma Anes, Susan Horowitz and John
4 Sammarco had each worked seven hours per day, five days
5 per week, for eight consecutive weeks.

6 8. On or about the 22nd day of August, 1975,
7 Irma Anes, the defendant, filed with the United States
8 Department of Agriculture a Food and Nutrition Service
9 reimbursement voucher for the Special Summer Food Services
10 Program of Youth In Government for July, 1975.

11 9. On or about the 29th day of August, 1975,
12 Irma Anes, the defendant, filed with the United States
13 Department of Agriculture a Food and Nutrition Service
14 reimbursement voucher for the Special Summer Food Services
15 Program of Youth In Government for August, 1975.

16 10. In or about August, 1975, Youth In Government
17 received from the United States Department of Agriculture
18 \$142,747 in payment of its claim for the expenses of the
19 Special Summer Food Services Program for July, 1975.

20 As I have already indicated, it is not necessary
21 for the Government to prove that each member of the conspiracy
22 committed or participated in any particular overt act of
23 the ten which I have read to you.

24 Also, the Government is not required to prove
25 every one of the ten overt acts charged. It is sufficient

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1 rklm 13

2 if the Government proves the commission of at least one,
3 any one of the acts alleged to have occurred charged as
4 overt acts, at or about the time alleged.

5 When people enter into a conspiracy to accomplish
6 an unlawful end, they become agents for one another in
7 carrying out the conspiracy. Hence, the acts or declara-
8 tions of one, in the course of the conspiracy and in
9 furtherance of the common purposes, are deemed to be the
10 acts of all, and all are responsible for such acts.

11 Accordingly, if you find, in accordance with
12 these instructions, that the alleged conspiracy existed
13 and the defendant or alleged co-conspirators were partici-
14 pants in it, then acts done and statements and declarations
15 made in furtherance of the conspiracy by the persons found
16 by you to have been members of the conspiracy, may be
17 considered against the defendant whom you find was a
18 member, even though such acts or deliberations were made
19 in the absence and without the knowledge of that defendant.

20 It is important to note that this principle
21 applies only to the acts and declarations done or made
22 during the continuance of the conspiracy and in furtherance
23 thereof; that is, to carry out an unlawful objective or
24 purpose of the conspiracy. It does not apply to acts or
25 declarations which do not have these characteristics.

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The defendants are charged in Counts 2 and 3 with the making and presenting of false claims against the United States. Count 1 is scheming to do so. Counts 2 and 3 were the actual making and presenting of false claims against the United States. These Counts 2 and 3 charge a violation of Title 18, United States Code, Section 237, which reads as follows:

"Whoever makes or presents to any person or officer of the United States or to any department or agency thereof any claim upon or against the United States or any department or agency thereof, knowing such claim false, fictitious or fraudulent, commits a crime."

Before you may convict any defendant on either, Count 2 or 3, you must be satisfied beyond a reasonable doubt of each of the following essential elements as to him or her:

1. That on or about the date set forth in each count, the defendant whom you are considering made or presented or aided and abetted another or others in the making or presentation of a claim against the United States to a department or agency thereof.

2. That the claim was false, fictitious or fraudulent.

3. That the defendant you are considering knew

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2 the claim to be false, fictitious or fraudulent.

3 4. That the defendant acted knowingly, willfully
4 and unlawfully.

5 With respect to the first essential element, that
6 the defendant made or presented a claim against the United
7 States through a department or agency of the United States,
8 the language describing this element is largely self-
9 explanatory. To make or to present is simply to cause to
10 be filed or to file a claim in a manner that would normally
11 cause the department or agency to act on that claim.

12 The claims referred to in Counts 2 and 3 are
13 Food and Nutrition Services reimbursement vouchers. You
14 have heard testimony that these vouchers are the means by
15 which sponsors participating in the Special Summer Food
16 Services Program seek reimbursement for their expenses
17 incurred in running the program. Although there appears
18 to be no dispute on this point, you must nevertheless find
19 beyond a reasonable doubt that these vouchers are claims
20 against the United States.

21 You must also find that these claims were made
22 or presented to an agent or department of the United
23 States. I charge you as a matter of law that the United
24 States Department of Agriculture is a department and agency
25 of the United States.

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In order to convict a defendant under either Count 2 or Count 3, you must find that the Food and Nutrition Service reimbursement vouchers were false, fictitious or fraudulent, and that the defendant you are considering knew that to be so.

The word "false," as used in the indictment, means the claim was untrue when made, and was then known to be untrue by the person making it or causing it to be made.

The word "fictitious" means that the claim contained matters that were contrived, invented or imaginary.

The word "fraudulent" means that the claim was falsely made and with the purpose of intent to deceive.

Before you can convict any defendant of either count, you must find beyond a reasonable doubt that he or she acted knowingly and willfully, with the specific intent to violate the law.

Now, an act is done knowingly if it was done voluntarily and purposely and not because of mistake, accident, mere negligence or any other innocent reason.

An act is willful if it is done knowingly, willfully, and with a bad motive or purpose.

To establish specific intent, the Government must prove that the defendant knowingly did an act that the

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1 rklm 22

2 law forbids or knowingly failed to do any act which the law
3 requires, purposely intending to violate the law.

4 Knowledge and willfullness of a defendant need
5 not be proved by direct witnesses. Like any other facts in
6 issue, it may be established by circumstantial evidence.

7 Here, as in other phases of the case, the signifi-
8 cant fact is the defendant's state of mind. It is obviously
9 impossible to prove the operation of a defendant's mind
10 because you can't look into a person's mind and see what
11 his intentions are or were, but the proof of the circum-
12 stances surrounding the transaction may well supply an
13 adequate and convincing basis or a finding that the defendant
14 acted willfully.

15 The actions of a person must be set in their time
16 and place, just as the full meaning of a word is commonly
17 understood only in its relation to other words in a sentence
18 or its context. So, the meaning of a particular act or
19 conduct may depend on the circumstances in which it is
20 found or surrounding it.

21 In determining this issue, you are entitled to
22 consider any statements made and acts done or omitted by
23 the defendant and all facts and circumstances in evidence
24 which may aid you in determining his or her state of mind.

25 With respect to Counts 2 and 3, you will recall

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1 rklm 23

2 that I had used the term "aiding and abetting." It is not
3 necessary that the Government prove that each defendant
4 personally did each act charged. For example, it is
5 unnecessary to sustain a conviction under Count 2 or Count
6 3 to show that a defendant actually participated personally
7 in the preparation of the reimbursement vouchers or in the
8 filing of them with the Department of Agriculture. A
9 Federal statute provides:

10 "Whoever commits an offense against the United
11 States, or aids, abets, counsels, commands, induces or
12 procures its commission, is guilty of a crime."

13 While there is no precise rule as to what acts
14 constitute aiding and abetting, it is enough that a defend-
15 ant in some manner associated himself or herself with the
16 illegal venture; that such defendant participated in it,
17 as something that he or she wished to bring about, or that
18 he or she sought by his or her actions to make it succeed.

19 One who aids or abets the commission of a crime
20 is equally guilty as the person who actually and physically
21 committed it.

22 It is not sufficient to show mere knowledge of
23 a false filing to find that a defendant was an aider and
24 abettor. You must find that a defendant knowingly and
25 intentionally participated in activities such as the receipt

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1 rkln 24

2 of money consciously taken for work not performed which,
3 when included on the claims filed with the Government,
4 caused the reimbursement vouchers to be inflated, false,
5 fictitious and fraudulent.

6 If you find such participation and such receipt
7 of unearned salaries by a defendant with knowledge and
8 intent, that payment or reimbursement would be made or
9 sought from the Government or its agency through reimburse-
10 ment vouchers which thus were inflated, false, fictitious
11 and fraudulent, you may find that defendant guilty, as an
12 aider and abettor of the making and filing of the false
13 claims.

14 A person may be guilty of causing a false claim
15 to be presented to the United States, even though he uses
16 an intermediary, innocent or not, to make and actually
17 pass on the claim to the United States.

18 I now want to turn to some general rules applicable
19 to trials, criminal trials, and the trial of this case:

20 In order to return a verdict of "not guilty"
21 or "guilty" as to any defendant on any of the three counts
22 in this case, each juror must agree thereto. Such a
23 verdict must be unanimous on the count which you are con-
24 sidering and as to the defendant you are considering, and
25 must represent each juror's individual judgment.

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2 It is your exclusive function to determine the
3 facts on the basis of your consideration of the evidence.
4 On the other hand, it is your duty to accept my instructions
5 as to what the law is, and that must be followed in this
6 case. You may not disregard the law or attempt to mitigate
7 it or rewrite it. Applying these instructions on the law
8 to the facts as you find them, you will decide whether or
9 not the defendant on trial before you is guilty of the
10 charges that have been made against him or her or any of
11 them.

12 Your recollection of the facts is what counts
13 here and not the recollection of counsel or even my recollec-
14 tion. It is for you to determine the weight you will give
15 to the evidence, the credibility you will extend to the
16 witnesses who testified and the reasonable inferences that
17 are to be drawn from the evidence that has been received.

18 As I have indicated earlier, an indictment defines
19 the charges against the defendant as to which the evidence
20 at the trial must be addressed. An indictment is not
21 evidence that a crime has been committed and no inference
22 of any kind may be drawn from its existence.

23 Each defendant pleaded "not guilty" to the
24 indictment. That means that the Government has the burden
25 of proving guilt beyond a reasonable doubt with respect to

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2 that defendant as to each element of the claims that that
3 defendant is accused of having committed. The defendant
4 does not have to prove that he or she is not guilty. He
5 or she does not have to submit any evidence on the subject
6 of his or her innocence or any evidence at all if he or
7 she doesn't want to. A defendant is presumed to be innocent
8 under our concept of the law and that presumption continues
9 throughout the trial and through your deliberations. It
10 is only overcome if and when you have determined on the
11 basis of your resolution of the facts, that guilt was
12 established beyond a reasonable doubt on each element of
13 the crime charged that you are considering.

14 By "reasonable doubt," we just do not mean
15 mathematical certainty or proof beyond all possible doubt.
16 We mean a doubt which is sufficient to cause a prudent
17 person to hesitate to act in a matter of importance to
18 himself or herself. If the evidence, which you believe is
19 such as would induce a prudent person to act without reser-
20 vation in a matter of importance to himself or herself,
21 then you may say, you have been convinced beyond a reason-
22 able doubt. A reasonable doubt is not a speculative doubt.
23 It is not caprice or whim. It is not a guess. It must
24 be, as the words used say, a reasonable doubt.

25 If, on the other hand, your mind is wavering

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or uncertain to the point where you have a doubt which would cause a prudent person to hesitate in a matter of importance to him or her, then you have not been convinced beyond a reasonable doubt.

In this case, the evidence produced has been both of direct and indirect or circumstantial character. The Government contends that its evidence establishes each defendant's guilt on each charge beyond a reasonable doubt. Each defendant contends that no evidence has overcome the presumption of his or her innocence and, at least, there is a reasonable doubt as to his or her guilt.

You will apply to all the evidence the same standard of proof to satisfy yourself of the guilt of the defendant beyond a reasonable doubt or else you must acquit that defendant. You must make your own evaluation of the evidence, including the testimony given by each of the witnesses, and determine the credibility which you choose to give to such evidence.

In weighing the testimony of witnesses, you may consider their relationship, if any, to the parties involved, namely, to the Government or to the defendant, and any bias against or interest in the parties or in the outcome of the case; the witness' manner while he or she was testifying, that is, the witness' candor, intelligence, whether the

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2 witness equivocated or whether the witness was frank and
3 straightforward; the extent to which the witness has been
4 corroborated or contradicted by other credible evidence or
5 circumstances or inconsistencies in the testimony.

6 Interest, as you know, creates a motive for
7 falsely testifying. The greater the interest, the stronger
8 the motive, and the defendant's interest in the result of
9 a trial is of a character possessed by no other witness.

10 If you believe a witness has willfully testified
11 falsely before you, you are privileged to disregard his
12 or her testimony or you don't have to. A man or woman may be
13 lying about part of what he or she says and may be telling
14 the truth about other parts. It is for you to decide, after
15 you have scrutinized the evidence and weighed the demeanor
16 of the witnesses.

17 In appraising any defendant's credibility, you
18 may take his or her interest in the outcome of the situation.
19 However, it by no means follows that simply because a
20 person has a vital interest in the end result, that he or
21 she is not capable of telling a truthful and straightforward
22 story. It is for you to decide to what extent, if at all,
23 the interest of a defendant has colored that defendant's
24 testimony.

25 You have heard testimony that the defendants,

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2 John Sammarco and Angelo Puig, made certain statements to
3 Government agents. If you find that either of these defend-
4 ants did make the statements accorded to them, then you
5 may give those statements such weight as you believe they
6 deserve under all of the facts and circumstances which
7 were brought out in the evidence.

8 There has been testimony that the defendants,
9 John Sammarco and Angelo Puig, also made a number of
10 statements to Government agents tending to show their
11 innocence. There has also been testimony that these state-
12 ments were false.

13 I charge you that exculpatory statements, state-
14 ments to excuse one or exonerate one, when shown to be
15 false, are circumstantial evidence of guilty consciousness
16 and have independent probative force and are to be considered
17 along with all the other facts and circumstances in evidence
18 in respect to that defendant.

19 Certain evidence was given to you of an alleged
20 incident allegedly pertaining to Mr. Puig and of an alleged
21 incident allegedly pertaining to Mr. Buigues, both referred
22 to as "threats," solely for identification of the subject.
23 That testimony has no relevance to any defendant except,
24 respectively, to Mr. Puig and to Mr. Buigues, and was
25 admitted solely against the defendant named in such evidence

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1 rklm 30

2 to be considered solely as against him, together with all
3 the other facts and circumstances and evidence relating
4 to that defendant.

5 If you credit the testimony as to such an incident,
6 it may, if you decide it had that effect, be evidence of
7 a consciousness of guilt, to be considered together with
8 all the other facts and circumstances and evidence, solely
9 for that purpose and solely in relation only to the particular
10 defendant referred to.

11 The defendants Horowitz, Puig and Duigues, you
12 will recall, introduced evidence tending to establish their
13 good reputation in their community and profession, prior
14 to and subsequent to the indictment in this case. Such
15 evidence may indicate to you that it is improbable that
16 a person of good character would commit the crime charged
17 here. Therefore, the jury should consider this evidence
18 along with all the other evidence in the case, in determining
19 the guilt or non-guilt of the defendants.

20 The circumstances may be such that evidence of
21 good character alone may create a reasonable doubt of the
22 defendant's guilt, although without it, the other evidence
23 may be convincing. However, evidence of good reputation
24 should not constitute an excuse to acquit the defendant if
25 the jury, after weighing all the evidence including the

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1 rklm 31

2 evidence of good character, is convinced beyond a reasonable
3 doubt that the defendant is guilty of the crime charged.

4 The law recognizes two types of evidence: direct
5 and circumstantial, either of which may be sufficient to
6 convince the jury, providing all the evidence is proved
7 beyond a reasonable doubt.

8 Direct evidence, of course, is evidence given by
9 a witness who is present at a conversation or the commission
10 of an act and testifies as to what he or she saw or what
11 he or she heard or discovered, what he or she knows of her
12 own or his own knowledge; something which comes to him or
13 her by virtue of the senses of sight or sound or smell or
14 touch.

15 Circumstantial evidence is, as most of you know,
16 evidence that tends to prove a disputed fact by proof of
17 other facts in evidence, which has a logical tendency to
18 lead one's mind to conclude that a fact in issue actually
19 exists. Circumstantial evidence should not be given any
20 less weight because it is circumstantial rather than direct.

21 A convenient illustration of circumstantial
22 evidence that I give to juries is this:

23 Suppose, at the time you came into court this
24 morning the sun was shining and there were no clouds in the
25 sky and when you came into this trial courtroom the shades

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2 were drawn and the blinds were down, so you couldn't see
3 outside, and assume you hadn't been outside since you came
4 in, and pretty soon somebody walked through that door into
5 the courtroom with a dripping umbrella and raincoat. When
6 you left outside it was clear, but when this person came in
7 with the dripping umbrella and raincoat, something may have
8 happened outside. You would be entitled to infer from the
9 circumstances, that there is a dripping umbrella and rain-
10 coat and that it is raining outside, even though you do not
11 see the rain outside. Thus, circumstantially, you infer
12 from one fact, the fact being the dripping raincoat and
13 umbrella, some other manner, that is, that it is raining
14 outside.

15 Under your oath, you can't allow consideration
16 of the punishment that might be inflicted upon a defendant
17 to influence your judgment in any way or in any sense
18 enter into your deliberation. The decision as to what type
19 of sentence, if any, should be imposed, is solely my
20 responsibility. That rests exclusively on me in the event
21 of a conviction. Your function is to weigh the evidence
22 in the case and to determine whether the defendant engaged
23 in criminal conduct described in the statutes and whether
24 he or she is guilty or not guilty of a particular count
25 you are considering. Your decision must be based solely on

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1 rkln 33

2 the evidence and the law and you must not be confused by
3 any argument which takes you away from what the case
4 before you is. You must not be influenced by any assumptions,
5 conjecture or sympathy in the case, either for the defend-
6 ant or any member of his or her family or otherwise.

7 In short, you are expected to use your common
8 sense and general experience in evaluating the evidence.

9 Your verdict in this case, when you get ready to
10 report it, will be on each count and with respect to each
11 defendant, separately, and it will be either "guilty" or
12 "not guilty"; and your verdict will be announced by Mr.
13 Johnson, who sits in the first seat, and who will act as
14 your spokesman. Your spokesman will be provided with a
15 copy of the indictment and with pencil and paper, should
16 you wish to communicate with the Court. Please do not
17 communicate with anyone, even me, except in writing, and
18 have the writing signed or initialled by your spokesman with
19 his name or initials; and do not communicate with anyone,
20 not even me, on how you stand, unless it is to say that you
21 are unanimous on the person and the count mentioned.

22 If you desire any of the exhibits, these will be
23 sent to you in the jury room upon request. If you want
24 any testimony read, that can be done also. It isn't easy
25 to find the testimony in these stenotype notes, so the more

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2 specific you are, the quicker we can accommodate any request
3 you do make.

4 I have now concluded my instructions, but I
5 want to take a moment to talk to the lawyers. They may
6 wish to call to my attention something that I may have
7 overlooked or on something as to which I have misspoken,
8 so if you will just relax in your seats for a moment, I
9 will talk to them and come back to you.

10 (At the side bar.)

11 THE COURT: Are there any exceptions or requests
12 on the part of the Government?

13 MR. EPSTEIN: There are none.

14 THE COURT: Any exceptions or requests on the
15 part of your clients, Mr. Hammer?

16 MR. HAMMER: No, sir.

17 THE COURT: Are there any exceptions or requests
18 on the part of your client, Mr. Honig?

19 MR. HONIG: There are no exceptions or requests.

20 THE COURT: Are there any exceptions or requests
21 on the part of your client, Mr. Flynn?

22 MR. FLYNN: Yes, your Honor. I respectfully
23 except to the Court's charge on the issue of specific intent;
24 and as I read it, it did not cover the issue.

25 I respectfully except to taking exception in the

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DEFENDANT

DOCKET NO.

76 CR. 864 MP

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
JAN. 17, 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant discharged
☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent. (T. 13, U.S.C., Sections 287 and 2.); conspiracy so to do. (T. 18, U.S.C., Section 371.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appealed to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) MONTHS on each of counts 1, 2 and 3 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

This sentence is to be deemed to be CONSECUTIVE to the sentence imposed on December 24, 1974 by Judge Whitman Knapp of this Court including the probation term imposed therein.

Defendant advised of his right to appeal.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant is continued on present bail until January 24, 1977 at 10 A.M. at which time he is to surrender to the U.S. Marshal in Room 506 for service of sentence.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

COMMITMENT
RECOMMEN-
DATION

MICROFILM

JAN 19 1977

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It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other specified officer.